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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,177	03/15/2004	Richard S. Belliveau		1469

27550 7590 03/20/2007
WALTER J, TENCZA JR.
10 STATION PLACE, SUITE 3
METUCHEN, NJ 08840

EXAMINER

LEE, Y MY QUACH

ART UNIT	PAPER NUMBER
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2885

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/801,177		BELLIVEAU, RICHARD S.	
	Examiner		Art Unit	
	Lee Y Quach		2885	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2006 has been entered.

2. Applicant is advised that the Notice of Appeal filed December 22, 2006 has been dismissed. The Appeal is premature in view of no outstanding office action or ground of rejection was presented following the Request for Continued Examination under 37 CFR 1.114. Upon further consideration, the notice of non-responsive of November 27, 2006 has been withdrawn in light of the following patentably distinct inventions and ground of rejection.

In the original prosecution of the patent under reissue, the elected species of figures 2A, 2B, 3A to 3C and 3F is directed to a flashlight having a thread holder with internal grooves threaded or screwed onto the threads mounted on a case to adjust the variable force or pressure, applied by a battery cell, on a flexible substrate having light emitting diodes mounted thereon to cause the substrate to deform in a first state and to not deform in a second state to change the direction of the concentration of the light emitted by the light emitting diodes which are mutually exclusive from other non elected species of figures 3D, 3E, 4(A-C), 5(A-C), 6(A-C), 7(A-C), 8(A-C), 9(A-B) and 12(A-C).

Newly added claims 13 to 82 in the reissue application that includes a plurality of different wavelengths light emitting diodes such as yellow, amber, red, blue, green, white, first ultraviolet color or second ultraviolet color light emitting diodes mounted on a curved substrate, a lamp driver, a communication component comprising a processor receiving a control command, a first housing pan and tilt in relation to a second housing by a motor caused by a remote control, a communication line providing a control signal, a fan, ventilation holes, a variable filter such as a liquid crystal emulsion filter and a control command varying the optical state of the filter are drawn to the non-elected species of figures 3D, 3E, 4(A-C), 5(A-C), 6(A-C),

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7(A-C), 8(A-C), 9(A-B) and 12(A-C) that are mutually exclusive from the elected species as defined in patent claims 1 to 12.

It appears that if these added claims were presented during the prosecution of the '499 application, these claims would have been restricted out as being directed to an invention that is patentably distinct from the elected invention, and these claims would have been withdrawn from consideration as being directed to a non-elected invention. By failing to file a divisional application, Applicant lost his right to claim any subject matter other than the claimed invention as patented by electing the species of figures 2A, 2B, 3A to 3C and 3F. Applicant cannot now undo the election by contending, on the present record, that his failure to include claims to the independent and distinct inventions of the newly added claims was due to an "error". Therefore, failure to present these added claims cannot be considered an error that supports reissuance of the patent within the meaning of 35 USC 251, first paragraph.

Further, these newly added claims are not broad enough to read on meaning generic to the invention elected (and patented) together with the invention not elected, these claims are therefore not analogous to the linking claims according to *In re Doyle* as argued on May 11, 2005 and March 2, 2006. MPEP 1412.01 Page 1400-17 August 2005.

In addition, these newly added claims are not "subcombination claims linking plural combinations" as stated on March 2, 2006. In comparison to claims 1 to 12, for instance, Applicant provides as evidence the descriptions in column 11, lines 50 to 53 and column 16, lines 15 to 24 of the patent as filed on May 11, 2005 to relate the invention of figure 3F (elected invention) which can be used with the invention of figure 3D (non elected invention), and the invention of figure 3D which can be used with invention of figure 12C (non elected invention) for the support of filing the reissue claims 13 to 82.

This is not found persuasive. It should be noted that column 11, lines 50 to 53 of the patent disclose that each LED of the groups shown in figure 3D is individually controllable by electronic circuitry which "may be similar" to that of figure 3F. This broad description does not teach that the LED of figure 3D is controlled by the circuitry of figure 3F nor does it teach that discrete circuits of figure 3F are being used in the invention of figure 3D. In fact, column 10, lines 62 to 65 of the patent disclose that various circuit designs may be used to connect the LEDs

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of figure 3F to the power source that are known in the art. This general description does not teach that the invention of figure 3F uses the circuitry such as “a lamp driver circuit” (figure 12C), “a communication component” (figure 12C) or “a processor” (figure 12C) as claimed to control the LEDs.

It appears that Applicant position that the circuits such as the lamp driver circuit, the communication component, the processor and ... of figure 12C is used to connect the LEDs of figure 3F to the power source, is prior art in view of the statement that “various circuit designs may be used to connect the LEDs to the power source that are known in the art”.

Furthermore, column 11, line 5 of the patent discloses “multicolor systems”. This general description does not identify what colors and different numbers of colors are considered to be within the meaning of the “multicolor systems” nor does it show that the multicolor systems are referring to the color of white, red, blue or green as claimed and disclosed in figure 3D or two different wavelengths or six different wavelengths as claimed.

With respect to column 16, lines 15 to 24, the broad description does not teach that the substrate 912 incorporates the embodiment of figure 3D, it merely discloses that the substrate 812, 912 “may incorporate embodiments like that shown in figure 3D”. Additionally, it merely discloses that the substrate may have a different number of light sources or patterns. These different numbers of light sources or patterns do not support that they are referring to the color light emitting diodes. Also, this broad description does not teach that the color LEDs and the circuits of figure 3D are controlled by “the lamp driver circuit”, “a communication component” or “processor” and the remote control of figure 12C.

The descriptions as referred to by Applicant do not provide antecedent support for the features as claimed. The descriptions also do not provide antecedent support that the invention of figure 3F (elected invention) can be used with the inventions of figure 3D (non elected invention) and 12C (non elected invention) nor do they support that the invention of figure 3D can be used with the invention of figure 12C. In fact, the invention of figures 3D, 3F and 12C are mutually exclusive from one another, these reissue claims are therefore not linking claims as referred to by Applicant.

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With regards to claims 21 to 24, 39 to 41, 60 to 62, 75 to 77, 79 and 81, these claims are directed to the features of a plurality of light emitting diodes, a lamp driver circuit, a communication component receiving a control command in combination with an electrical component such as a processor, a first housing tilt in relation to a second housing by a motor, a rotation of the first housing relative to the second housing caused by a remote control, a communication line providing a control signal while claims 25, 26, 42, 43, 63 and 64 are directed to the features of a substrate, a plurality of light emitting diodes, a lamp driver circuit, a communication component receiving a control command in combination with a fan and ventilation holes located in the substrate, and while claims 27 to 30, 33, 34, 44 to 47 and 65 to 68 are directed to an invention having a substrate, a plurality of light emitting diodes, a lamp driver circuit, a communication component receiving a control command in combination with a variable filter which is a liquid crystal filter. All of these features are mutually exclusive from one another and these mutually exclusive features of the claimed combinations have materially different modes of operation or functions and are not obvious variations of each other.

Applicant explanations and arguments filed March 15, 2004 and May 11, 2005 to tie the invention of figure 3F with the inventions of figures 3D and 12C for the support of reissue claims 13 to 82 raise the objection to the specification and rejection to the claims under first paragraph.

Specification

3. The specification is objected to as failing to provide antecedent basis for the claimed subject matter. The descriptions of the specification, as referred to by Applicant of May 11, 2005 fail to provide support for the features as claimed in the reissue claims. These descriptions as relied on by Applicant do not support that the invention of figure 3F (elected invention) can be used with the inventions of figure 3D (non elected invention) and 12C (non elected invention) as well as they do not support that the invention of figure 3D can be used with the invention of figure 12C. Note the above explanations.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In column 11, lines 50 to 53 of the patent, what is considered to be within the meaning of the “electronic circuitry which may be similar to that of figure 3F”? This broad statement does not provide a standard for ascertaining that “the electronic circuitry which may be similar to that of figure 3F” is the actual electronic circuitry of figure 3F, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Also, in column 16, lines 15 to 24, it is not clear what is considered to be within the meaning of the “may incorporate embodiments like that shown in figure 3D”? This broad statement does not provide a standard for ascertaining that “the substrate may incorporate embodiments like that shown in figure 3D” is the substrate incorporating the actual embodiment of figure 3D, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Further, column 10, lines 62 to 65 of the patent disclose that various circuit designs may be used to connect the LEDs to the power source that are known in the art. However, it is not clear what circuitry is considered to be “various circuit designs may be used to connect the LEDs to the power source that are known in the art”? This general description does not teach that the invention of figure 3F uses the circuitry such as “a lamp driver circuit” (figure 12C), “a communication component” (figure 12C) or “a processor” (figure 12C) as claimed to control the LEDs.

Furthermore, column 11, line 5 of the patent discloses “multicolor systems”. It is not clear what colors and different numbers of colors are considered to be within the meaning of the “multicolor systems”? Note that these descriptions do not provide full, clear, concise, and exact terms as to enable a person skilled in the art to make and use the same.

5. Claims 13 to 82 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The reissue claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventions of figures 3D, 3F and 12C can be used with respect to one another at the time the application was filed.

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Therefore, it is not clear how are the plurality of different wavelength light emitting diodes such as yellow, amber, red, blue, green, white, first ultraviolet color or second ultraviolet color light emitting diodes, a lamp driver, a communication component comprising a processor receiving a control command, a first, second, third circuit, a first housing pan and tilt in relation to a second housing by a motor caused by a remote control, a communication line providing a control signal, a fan, ventilation holes, a variable filter such as a liquid crystal emulsion filter and a control command varying the optical state of the filter of figures 3D, 3F and 12C operated or functioning with respect to one another in view of the above lack of antecedent support in the specification as originally presented?

6. The reissue oath/declaration filed with this application is defective (see MPEP 1414) because the error attempted to be corrected is not the type of error that is correctable through reissue, the requirement under U.S.C. 251 therefore has not been met.

7. Claims 1 to 82 are rejected as being based upon a defective reissue oath or declaration under 35 U.S.C. 251 for lack of error as set forth above. The nature of the defect(s) is set forth in the discussion above in this Office action.

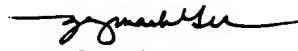
8. With regards to the decision of Ex Parte Okamoto filed on February 13, 2007, this decision is irrelevant to the subject matter at issue. There was no formal election of species or restriction presented in the Appellant's original application while Applicant's instant reissue application had an election of species made in Applicant's original application before the application matured into the patent. Accordingly, this decision has no bearing or relevancy to Applicant's reissue application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service 571-272-2815.

Y. Q.
February 20, 2007


Y Quach Lee
Primary Examiner
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